

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 653**

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**Introduced by Assembly Member Feuer**

February 25, 2009

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An act to *add Article 5.5 (commencing with Section 988) to Chapter 4 of Division 8 of the Evidence Code*, relating to evidence.

### LEGISLATIVE COUNSEL'S DIGEST

AB 653, as amended, Feuer. Evidence: marital privilege.

Existing law provides that a spouse has a privilege during the marital relationship and afterwards to refuse to disclose, and to prevent another from disclosing, a communication if the spouse claims the privilege and the communication was made in confidence between the spouses while they were husband and wife. *A married person also has a privilege not to testify against his or her spouse in any proceeding and, when the spouse is a party to a proceeding, a privilege not to be called as a witness by an adverse party to that proceeding without the prior express consent of the spouse having the privilege.*

~~This bill would declare the intent of the Legislature to enact legislation to address the opinion of the Court of Appeal in *Riverside County Sheriff's Dept. v. Zigman* (2008) 169 Cal.App.4th 763, regarding the loss of marital privilege in law enforcement administrative investigations and hearings provide that a peace officer who asserts any of the marital privileges described above shall not be subject to administrative discipline for failure to report information to his or her supervisor or department, except when the information concerns criminal or certain other conduct of the peace officer's spouse, who is also a peace officer employed by the department, and other specified conditions apply.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. (a) The Legislature finds and declares that the*  
2     *time-honored privilege not to testify against one's spouse is*  
3     *grounded on the premise that compelled testimony of a spouse*  
4     *would, in many cases, seriously disturb if not completely disrupt*  
5     *the marital relationship (People v. Sinohui (2002) 28 Cal.4th 205).*  
6     *As the California Law Revision Commission has commented with*  
7     *respect to Section 970 of the Evidence Code, society generally*  
8     *stands to lose more as the result of that disruption than it stands*  
9     *to gain from the testimony that would be available if the privilege*  
10    *did not exist.*

11    *(b) It is the intent of the Legislature that this act shall apply*  
12    *only to administrative disciplinary investigations and hearings,*  
13    *and not to other civil or criminal proceedings. It is the further*  
14    *intent of the Legislature to overrule Riverside County Sheriff's*  
15    *Department v. Zigman (2008) 169 Cal.App.4th 763 to the extent*  
16    *that it is inconsistent with this act.*

17    *SEC. 2. Article 5.5 (commencing with Section 988) is added*  
18    *to Chapter 4 of Division 8 of the Evidence Code, to read:*

19  
20     *Article 5.5. Marital Privilege in Peace Officer Administrative*  
21     *Disciplinary Investigations and Hearings*  
22

23     *988. (a) A peace officer who asserts the privilege of a spouse*  
24     *under Section 970, 971, or 980 to refuse to testify or be called as*  
25     *a witness against his or her spouse, or to disclose confidential*  
26     *marital communications, shall not be subject to administrative*  
27     *discipline for failure to report information to his or her supervisor*  
28     *or department, except when all of the following are true:*

29     *(1) The information concerns conduct of the peace officer's*  
30     *spouse, who is also a peace officer employed by the same*  
31     *department, that is criminal or a serious violation of department*  
32     *policy, or subjects the department to a specific and significant risk*  
33     *of civil liability.*

1     (2) *Failure to reveal the information creates a demonstrable*  
2 *risk of harm to a third party or the public, including the*  
3 *department.*

4     (3) *The interests of justice require disclosure of the information*  
5 *because, after exercising reasonable diligence, independent*  
6 *evidence does not otherwise appear to be reasonably available to*  
7 *proceed with an administrative disciplinary investigation or*  
8 *hearing.*

9     (b) *This section does not apply if the peace officer is a percipient*  
10 *witness to the misconduct at issue.*

11     (c) *Nothing in this section shall impair any right or privilege*  
12 *pursuant to a memorandum of understanding between a department*  
13 *and a certified bargaining unit representing peace officers, or*  
14 *limit their ability to negotiate and agree to a higher standard of*  
15 *rights or privileges.*

16     ~~SECTION 1. It is the intent of the Legislature to enact~~  
17 ~~legislation to address the opinion of the Court of Appeal in~~  
18 ~~Riverside County Sheriff's Dept. v. Zigman (2008) 169~~  
19 ~~Cal.App.4th 763 regarding the loss of marital privilege in law~~  
20 ~~enforcement administrative investigations and hearings.~~